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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by the Asian Legal Resource Centre, non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[26 May 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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NEPAL: Council should exert strong pressure to bring a law that criminalises torture*

1. Torture is a grave violation of human rights. The prohibition of torture is a fundamental element of international law, enshrined in major international human rights instruments, such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984, Universal Declaration of Human Rights (UDHR), 1948 and International Covenant on Civil and Political Rights (ICCPR), 1966.

2. Nepal has acceded to the CAT on May 14, 1991. The Interim Constitution of Nepal, 2063 (2007) penalized torture. In 1996, the Government of Nepal promulgated the Compensation Relating to Torture Act, 2053 (1996), also known as the Torture Compensation Act (TCA), which did not adequately grasp the gravity of issues related to torture and match the standards of the CAT. The TCA prohibits torture and contains provisions for compensation to victims of torture and departmental action against the employees of the government who inflict torture on others. Besides the TCA, the National Human Rights Commission Act, 2068 (2012), Evidence Act, 2031 (1974), Draft Criminal Code and Country Code, 1963 (*MulukiAin*, 2020) also contain important provisions against torture.

3. Despite all these provisions, torture is still widely prevalent in Nepal and there is no effective redress to victims of torture in the country. Moreover, the government has failed to criminalize torture despite the Supreme Court's order in 2007 to do so. As rightly noted by the UN's Committee against Torture, the government has not been adequately successful in terms of fulfilling many of its obligations under the CAT.

4. Nepal has rejected the recommendation of the UPR to become a State party to the Optional Protocol to the Convention Against Torture (OPCAT). The Committee against Torture, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Universal Periodic Review (UPR) process and OHCHR's *Nepal Conflict Report 2012* has provided many appropriate recommendations to the Government on torture-related issues but it has yet to implement those recommendations.

5. In terms of access to justice of the victims of torture in Nepal, notably, the TCA does not adhere to the principles pertaining to the rehabilitation of victims of torture as set forth in the CAT. While Nepal's judiciary has played a crucial role in the protection of human rights in the country, there have been some instances in which the country's courts have decided to award very low amounts of compensation to victims of torture, refrained from ordering departmental action against perpetrators and imposed fines on victims of torture for threats-induced withdrawal of their cases.

6. The failure to criminalise torture, the narrow definition of torture, the statute of limitations of 35 days for lodging complaints of torture, the lack of a victim-friendly justice procedure and a mechanism for the investigation of cases of alleged torture, the insufficient remedy to victims of torture, the lack of effective protection of victims and witnesses, the social stigma attached to victims of torture, the weaknesses in terms of medico-legal documentation, the lack of national prevention mechanisms, the culture of impunity, the lack of legal support and rehabilitation services for victims of torture, exclusion of victims of torture from the definition of the victims of conflict and obstruction in the delivery of justice to the conflict-era victims of torture due to the delay in the formation of the transitional justice mechanism (TJM) are the major hurdles to access to justice of the victims of torture in Nepal.

7. Due to the delay in establishing the Transitional Justice Mechanism (TJM) promised in the Comprehensive Peace Agreement (CPA), 2063 (2006) and Interim Constitution of Nepal, 2063 (2007), victims of torture from the era of internal conflict (1996-2006) in the country have not obtained justice even more than 8 years after the signing of the CPA.

8. The Interim Constitution of Nepal, 2063 (2007) explicitly prohibits torture. The Compensation Relating to Torture Act 2053 (1996) also prohibits torture in detention and includes provisions for compensation to the victims of torture and departmental action against the perpetrators. Although the state has made some attempts to prevent torture and provide compensation to the victims of torture in Nepal, its initiatives have not been satisfactory in terms of meeting its obligations regarding torture. In practice, torture has continued in detention centers and there is no investigation mechanism for alleged cases of torture in the country.

9. Nepal's prevalent system lacks adequate remedy for torture; most of the alleged incidents of torture in the country have not been dealt with satisfactorily and perpetrators of torture have remained unpunished. Moreover, there is also a severe deficiency in terms of rehabilitative services targeting the victims of torture in the country. Consequently, access to justice of victims of torture remains, to a large extent, an unaddressed issue in Nepal.

10. Likewise, due to the state's unclear, skewed definition of the victims of conflict, the conflict-era victims of torture have not officially been considered victims of conflict; as a result, victims of torture have not received any support provided by the government to the victims of conflict. Instead of reparation, victims of torture have been receiving threats; they are being re-victimized. The government has not satisfactorily implemented the recommendations of the relevant treaty bodies of the United Nations (UN) and Universal Periodic Review (UPR) on the issue of torture. As the government has failed to address salient issues associated with torture in line with international standards, victims of torture are forced to accept injustice in the country.

11. For the prevention of torture and promotion of access to justice of victims of torture in Nepal, the Council not only should exert pressure to the Nepali government but also engage to bring a law that criminalizes torture. In light of the above, the Asian Legal Resource Centre requests for the Human Rights Council to call on the government of Nepal to:

a. Immediately enact a law criminalising an act of torture in line with the definition stipulated in the Article 1 of the CAT;

b. Establish an independent and competent mechanism to investigate all credible allegations of torture and other cruel, inhuman or degrading treatment or punishment;

c. Ensure that victims of torture are able to lodge complaints and initiate legal actions against perpetrators without any statute of limitations;

d. Introduce interim relief to the victims of torture during trial and ensure the provision of adequate compensation and rehabilitation package to the victims;

e. Ratify the OPCAT and establish a suitable national preventive mechanism;

f. Ratify the Rome Statute of the International Criminal Court (ICC);

g. Enact a law for the protection of victims and witnesses;

h. Put sexual violence and rape fall under the definition of torture and provide immediate support to the victims if necessary;

i. Implement the recommendations made by the UPR, Special Rapporteur of the United Nations Commission on Human Rights on torture and other cruel, inhuman or degrading treatment or punishment, Committee against Torture and *Nepal Conflict Report2012* (prepared by the United Nations Office of the High Commissioner for Human Rights);

j. Conduct capacity-building activities for the country's law enforcement agencies (such as security forces), legal professionals and the judiciary on issues associated with the prevention of torture and protection of, and legal redress for, victims of torture, and;

k. Train health professionals on the documentation of torture.

12. The ALRC also calls on the National Human Rights Commission to conduct its activities in line with the Interim Constitution of Nepal, 2063 (2007), National Human Rights Commission Act, 2068 (2012) and Paris Principles for the prevention of torture and delivery of justice to the victims of torture.

13. The ALRC further requests the international community including the UN and developing agencies to continue to provide ample resources and technical assistance to the government of Nepal with full knowledge of practical barriers that prevent the government of Nepal from fulfilling its obligations with regard to the relevant international human rights instruments and mechanisms, including the CAT.

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* Forum for Protection of People's Rights, Nepal (PPR Nepal) NGO(s) without consultative status, also share the views expressed in this statement.